

(1952) 11 OHC CK 0004

In the Orissa High Court

Case No : Second Appeal No. 503 of 1948

Managobinda Panda

APPELLANT

Vs

Srimat Paramahansa Paribrajakacharja Sankar Shri
Sachidananda Swami

RESPONDENT

Date of Decision : 04-11-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Citation : AIR 1953 Ori 151 : (1953) 19 CLT 265

Hon'ble Judges : Panigrahi, J

Bench : Single Bench

Advocate : S.K. De, for the Appellant; B. Mohapatra, for the Respondent

Final Decision : Dismissed

Judgement

Panigrahi, J.—This is a defendant's second appeal in a suit for a declaration that the plaintiff, who is the Superintendent of the Deity Shri Lokenath Deb at Puri has the right of offering pangthi-bhog to the Thakur on Kanyachori Day. The plaintiff also claimed damages owing to loss sustained by him on account of the defendant's refusal to accept the bhog offered by him on 30-5-41 when the deity was being taken out in procession on that occasion.

2. The admitted facts are that defendant 1 who is a sebak of the deity had his turn of seba on that day and that the deities Hara and Parbati were taken out of the temple on procession. It is further admitted that panthi bhog is offered by devotees at certain places as the deities go out in procession through the streets. When the procession reached a little distance from the plaintiff's math defendants 2 to 4 at the instigation of defendant 1 removed the deities from the palanquin and went away declining to take the deities, to the plaintiff's math for receiving the panthi bhog. The bhog that the plaintiff had prepared for being offer-ed to the deities was worth Rs. 60/12/- and had to be destroyed as it could not be offered to the deities.

3. The Courts below concurrently found that the plaintiff had been offering panthi bhog to the deities, in the manner alleged by him, for about forty years and that both before and after the year 1941 he had been enjoying that privilege; they also found that on the day in question the defendant deliberately deprived the plaintiff of his right, to offer bhog and caused him loss as claimed by him. These are concurrent findings of fact which are binding upon me. But apart from that I have gone through the voluminous documentary evidence filed by the plaintiff as well as the oral evidence, and I am satisfied that no other conclusion is possible on the evidence.

4. The point, however, that has been seriously contested by Mr. De, for the appellant is that the Civil Court has no jurisdiction to entertain the suit as it is not cognizable u/s 9, Civil P.C. That section bars from the cognizance of Civil Courts suits for enforcement of a right which depends entirely on the decision of questions as the religious rights or ceremonies. But rights to property or to office are of a civil nature and can be enforced by a suit. If, therefore, the suit is laid for enforcing a right to an office or for damages for violation of that right the suit is not exempted from the cognizance of the civil Courts. If, however, it involves merely a question of honours or privileges attached to a religious office, the civil Court will not entertain a claim based on such claims. The distinction has been well laid down in -- Chitti Babu Mudaliar Vs. A. Venkatasubbu Mudaliar and Another, .

In that case the plaintiff sued for a declaration that as the senior member of the family, he was entitled to conduct a particular festival in a temple. He, however, conceded that he was neither bound to go to the temple, nor could the temple authorities compel him to go to the temple, on the festival day to perform it. Moreover, in that case it was conceded that the funds for the Utsavam came from, the trustees and that the plaintiff could send a substitute to supervise the festival. The plaintiff did not claim any right of property in the temple or in an office. All that his claim amounted to was to compel the temple authorities to put into his hands certain offerings and confer upon him the usual honours. In such circumstances the plaintiff's claim was rejected and the suit was held to be not maintainable.

5. It is essential that, in order to constitute an office there must be certain duties attach-ed to it, which the office holder is under a legal obligation to discharge and the non-observance or non-performance of which must be visited with penalties. The present suit is, as stated already, an action by the Parichcha or the Superintendent of the temple whose duties and rights are defined by custom and usage. The defendants are likewise sebakas who are subordinate to the Superintendent and are bound to follow his directions. This is not a suit to regulate ceremonies but one to enforce the right of the plaintiff to offer bhog to the deity, as the Superintendent of the temple.

6. In -- "Vanamamalai Ramanuja v. Board of Commrs. for H.R.E. Madras", AIR 1935 Mad 621 (B), the plaintiff who was the Head of the Vanamamali math

claimed certain special honours and privileges in the Adhinadha Alwas Temple in preference to other persons in that temple. It will be noticed that that suit, was not laid to establish a right to property or anything connected with property but was only a suit for a declaration that he had been deprived of a right to receive certain honours or privileges, by certain proceedings taken by the defendants. In substance the suit was for the recognition of his preferential claim to certain honours though his claim was wrapped up in a prayer for a declaration that the Board acted without jurisdiction. That prayer was rejected on the ground that the suit was based on a claim for honours. The case of -- "Thatha chariar v. Srivasa Raghava", AIR 1938 Mad 334 (C) was a similar suit for declaration that the plaintiff and his family were entitled to the first honours in the temple, namely, Tulsi thirtham, Satri, on the occasion of a particular festival. If the honour claimed appertains to a right of worship the right to such honour is a civil right -- see -- "Thirumalai v. Srinivasachariar", AIR 1917 Mad 903 (D). It was held by their Lordships of the Madras High Court that a right to an honour or worship in a particular manner, and with particular incidents attached to it, is a right of a civil nature.

7. The current of authorities indicates that a right to take part in public worship either in a temple or of a deity while it is being taken out in procession is a civil right, cognizable by a Civil Court. The question whether the plaintiff has such a right should be decided on the facts of the case and the usage of the temple concerned and where such a right is claimed and proved to be one enjoyed from time immemorial, according to the custom of that temple, it should be upheld. Having regard to the nature of the right claimed by the plaintiff in the present case and concurrent findings of facts that as a hereditary trustee, the plaintiff has been exercising this right for over half a century. I would hold that it is a right which is enforceable through a civil Court as it appertains to an office. The suit has accordingly been rightly decreed.

8. The appeal must accordingly fail and is dismissed with costs.